IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2168 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

==========

KHAIRANBIBI WD/O HASANALI SADATALI & 13 - Appellant(s)
Versus
SPL. LAND ACQUISITION OFFICER & 1 - Defendant(s)

==========

Appearance :
MR PV NANAVATI for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8, 1.2.9,1.2.10 - 3.
NOTICE SERVED BY DS for Defendant(s) : 1,
MS RV ACHARYA for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 09/07/2007

ORAL JUDGMENT

1. Admit.

2. Ms.Reeta Chandarana, learned AGP waives service of admission on behalf of defendant no.1 and Ms.R.V.Acharya, learned advocate waives service of admission for the defendant no.2.

3. Khairanbibi-widow of Hasanali Sadatali and others, appellants have filed this appeal under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code against the common judgment and award dated 18/9/1992 passed by the learned Assistant Judge, Kheda at Nadiad in Land Reference Case No.22 of 1985 and others. The learned Judge by the impugned common judgment, was pleased to partly allow all the applications and held that:

> “Land Reference Cases are partly allowed. Claimants are entitled to get compensation @ Rs.4/- per sq. mt. with solatium @ 30% per annum and interest @ 9% per annum for the first year and 15% per annum for remaining year from the date of taking over the possession. The amount payable by the acquiring body i.e. opponent no.2, to each

claimants are shown in the schedule attached to the judgment. The opponent no.2 is hereby ordered to pay the amount of compensation along with interest as shown in column no.12 of the schedule. The claimants in Land Reference Case No.111/84 are entitled to get sum of Rs.18,380/- by way of compensation for trees at the rate of Rs.5,000/- for query over and above amount of compensation shown in column no.12 of the schedule.

The claimants will be at liberty to apply to the Court to award additional amount @ 12% per annum as per Section 23(1)(A) of the Act if they are entitled to get the same as per judgment of Hon'bleWimbledon's Supreme Court in the case of K.S.Pariapoornm which is pending before the Larger Bench. The opponents are ordered to pay proportionate costs of this reference to the claimants."

4. On behalf of appellants, I have heard Mr.P.V.Nanavati, learned advocate along with Mr.Vibhuti Nanavati, learned advocate for the

appellant. On behalf of the Special Land Acquisition Officer, I have heard Ms.Reeta Chandarana, learned AGP. On behalf of opponent no.2, GEB, I have heard Ms.R.V.Acharya, learned advocate, in this behalf. With consent of all the learned advocates for the parties, matter is taken up for final disposal, in this behalf.

5. Mr.P.V.Nanavati, learned advocate for the appellant states that matter is covered by the judgment of this Court (Coram:B.C.Patel and S.D.Dave, J.J.) dated 8/10/2001 and 15/10/2001 in the case of Shokatali Mahmadali and another vs. Special Land Acquisition Officer and another in First Appeal No.171 of 2000.

6. The facts giving rise to this appeal are as under:

6.1) The Chief Engineer, Gujarat Electricity Board sent proposals to acquire agriculture land situated in the sim of village Pali, Taluka-Thasara for the construction of railway siding work for Vanakbori Thermal Power Station, somewhere in the month of August to December,

1977. The Government has accepted the proposal of GEB and issued four notifications under Section 4 and under Section 6 of the Land Acquisition Act to acquire agriculture lands of village Pali, Taluka-Thasra. The details about the issuance of the notifications under Section 4 and Section 6 are as under:

Sr. No.	Date of notification under Sec.4	Date of publication in Govt. Gazette	Date of notification under Sec.6	Date of publication in Govt. Gazette
1	24/7/78	27/7/78	20/6/79	21/6/79
2	16/10/78	26/10/78	28/3/79	5/4/79
3	20/8/1979	20/8/1979	11/12/79	11/12/79
4	4/2/80	4/2/80	14/7/80	27/7/80

6.2) Thereafter, the Land Acquisition Officer has issued notice under Section 9 to the owners of the land. The owners claimed compensation @ Rs.2,000/- per guntha. The Land Acquisition Officer collected the oral and documentary evidence as regard the market value of the land from Government record as well as from owners of the land. After perusing the record as regard the market value, the Land Acquisition Officer awarded compensation @ Rs.1.20 pr sq. mt. i.e. Rs.120/- per Are for old tenure land and Rs.100/- for new

tenure land by his award dated 27/1/1982. The Land Acquisition Officer has pronounced four different awards for the same. For, the said awards, details are as under:

Sr. No.	L.A.Q. Case No.	Date of Award	Date of Possession
1	2/77	27/1/1982	23/3/79 and 1/9/79
2	1/78	27/1/1982	27/6/80
3	1/79	27/1/1982	7/12/7 and 7/1/80
4	16/79	27/1/1982	7/9/79 and 14/11/79

So far as the Land Reference Case No.111/84 is concerned, the owners have claimed compensation for 340 trees standing on the land. The Land Acquisition Officer has also awarded compensation for the same. There was quarry in one field. The owner has claimed sum of Rs.10,000/- for the same.

6.3) Being aggrieved and dissatisfied with the said award, the owners filed Land Reference Case before the Court of learned Assistant Judge, Kheda at Nadiad and prayed for the compensation at the rate of Rs.2,000/- per Are.

6.4) On the other hand, the Government-opponent

has filed reply and stated that compensation awarded by the Land Acquisition Officer is adequate and the land reference cases should be dismissed. The acquiring body, Gujarat Electricity Board has filed separate written statement and contended that the acquired land is of inferior quality. The acquired land was being used for agriculture purpose. It is situated in rocky area. The compensation offered by the Land Acquisition Officer is proper and reasonable and therefore, they have prayed to dismiss the land reference cases. The learned Judge has allowed the land reference cases partly and awarded compensation at the rate of Rs.4/- per sq. mt. with solatuim at the rate of 30% per annum and interest at the rate of 9% per annum.

6.5) So far as the present case is concerned, details of the said case are as under:

Case No.	Name of claimant	Sr. No.	Area in Hec.-Are-Sq.mt.	Comp. awarded by the Court @ Rs.4 per sq. mt.	Solatium @ 30% per annum	Total
22 of 85	Heirs of Deceased Husainali Sadatali	38	0-62-09	24836/-	7450/-	32286/-

6.6) Being aggrieved and dissatisfied with the said judgment, the claimants have filed this appeal before this Court.

7. Mr.P.V. Nanavati, learned advocate states that when this matter was originally heard, about 84 land reference cases were there and all the cases were disposed of and the Division Bench of this Court has also disposed of the appeals against all these reference cases. Only through over sight, the Land Reference Case No.22 of 1985 was left out.

8. In para 19 of the judgment in the case of Shokatali Mahmadali and another vs. Special Land Acquisition Officer and another in First Appeal No.171 of 2000, the Division Bench of this Court, it is observed as under:

> “We are of the opinion that considering the sale instances, the development that was in existence and potentiality, the amount of compensation is required to increased. The claimants of lands whose lands were acquired under notification dated 27.7.78 and 26.10.78 are held entitled to get Rs.11/- per sq.mtr. The claimants whose lands were acquired under notification dated 20.8.79 are held entitled to get Rs.11.50 per sq.mtr. and the claimants whose lands under notification dated 4.2.80 were acquired are held entitled to get Rs.12/- per sq.mtr.”

9. It may be noted that as far as the present case is concerned, notification issued on 20/8/79 and therefore, the claimants in the present case are entitled to get Rs.11.50 per sq. mtr. Over and above, the claimants are also entitled to get other statutory benefits as awarded by the Reference Court. The State is also required to pay interest on solatium in view of the judgment of the Hon'ble Apex Court in the case of Sunder vs. Union of India, reported in AIR 2001 SC 3516. The

Apex Court in the said judgment pointed out as under:

> “We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra).
>
> > 'Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'
>
> In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the persons entitled to the compensation awarded is also entitled to get interest on the aggregate amount

including solatium. The reference is answered accordingly."

In view of the judgment of the Apex Court, the claimants are entitled to get interest on solatium. The award stands modified accordingly.”

10. Following the Division Bench judgment of this Court, the learned counsel further submitted that the land has been acquired in the year 1977. Therefore, the State must be directed to pay the amount of compensation within stipulated time.

11. On the other hand, Ms.Reeta Chandarana, learned AGP has submitted that some reasonable time should be given.

12. Therefore, in view of the above facts and circumstances, the appeal is allowed and the State Government is directed to pay the 50% of the amount awarded within three months after proper verification and the remaining 50% amount within three months thereafter. The appeal is disposed of accordingly.

(K.M.Mehta, J.)

(ila)